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S.B., Appellant)	
)	
and)	Docket No. 15-1767
)	Issued: January 4, 2016
DEPARTMENT OF THE NAVY, NAVY)	
REGION SOUTHWEST HUMAN RESOURCES)	
OFFICES, San Diego, CA, Employer)	
)	

Case Submitted on the Record

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 20, 2015 appellant, through counsel, filed a timely appeal from March 18 and July 17, 2015 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On appeal, appellant's counsel asserts that the evidence is sufficient to establish, at the least, that appellant has established compensable factors of employment and, therefore, the case must be remanded for development of the medical evidence.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² In an August 7, 2013 decision, the Board affirmed a June 28, 2012 OWCP decision. The Board noted that appellant had not attributed her emotional condition to the performance of her regular work duties or to any special work requirement arising from her employment duties. Rather, appellant's claim pertained to administrative actions that occurred beginning in May 2009 and allegations that she was harassed and treated in an abusive manner by employing establishment supervisors. The Board found that appellant's allegations regarding the denial of leave, participation in a wellness program, requesting a personal refrigerator, and having her desk moved were without merit as they were reasonable administrative functions and there was no indication of error or abuse in these matters. The Board further found that appellant's assertion that she was forced to attend a physician's appointment in September 2009 also without merit. The Board noted that it was reasonable for the supervisor to schedule a medical appointment for appellant, based on language in an e-mail forwarded to her by appellant.³ Finally, the Board found that appellant did not establish a factual basis for her allegation of verbal abuse or harassment by employing establishment management.⁴ The facts of the previous Board decision are incorporated herein by reference.

On April 3, 2014 appellant, through counsel, requested reconsideration with OWCP. Counsel asserted that, based on an attached statement, appellant "unequivocally states that her work duties contributed to her emotional condition." In a March 28, 2014 statement, appellant indicated that "the constant stress of my daily work duties over time has contributed to my emotional condition of Major Depressive and Severe Recurrent Panic Disorders."

In a merit decision dated September 17, 2014, OWCP denied modification of the prior decisions. It found appellant's statement vague and insufficient because she did not describe with specificity the work duties she believed contributed to her emotional condition.

On January 20, 2015 counsel again requested reconsideration, asserting that an attached statement by appellant established that her work duties contributed to her emotional condition. In a January 14, 2015 statement, appellant reported that her department was greatly impacted by base realignment, closures, and reassignments. In 2009 she became emotionally stressed when trying to balance multiple jobs as a travel assistant and passport agent. Appellant noted simultaneously performing counter, accounting, customer service clerk, central telephone

² On March 17, 2011 appellant, then a 46-year-old transportation assistant, filed an occupational disease claim alleging that factors of her employment caused stress. In a September 15, 2011 decision, OWCP found that she did not establish a compensable factors of employment and denied her claim that she sustained an emotional condition in the performance of duty. The employing establishment provided a statement on December 9, 2011 countering appellant's allegations. Appellant retired on disability effective December 31, 2011. In a decision on the merits of her claim dated June 28, 2012, OWCP denied modification of the September 15, 2011 decision.

³ In the September 3, 2009 e-mail message, appellant, who is diabetic, stated that high volumes of stress and anxiety and increased sugar levels, "could be dangerous to myself and others around me."

⁴ Docket No. 12-1715 (issued August 7, 2013), *Order Denying Petition for Recon.* (issued March 5, 2014). The record includes reports by several doctors who diagnosed acute stress reaction, major depressive disorder, and panic disorder.

operator, port call message, adviser, and ship locator duties plus maintaining a physical and electronic, numerical, and alphabetical filing system without proper training.

In a merit decision dated March 18, 2015, OWCP reviewed appellant's statement and found the evidence submitted insufficient to establish a compensable factor of employment and denied her claim that she sustained an emotional condition in the performance of duty.

Appellant, through counsel, again requested reconsideration on April 21, 2015, asserting that her work duties as described contributed to her diagnosed emotional condition. In an April 14, 2015 statement, Sabrina A. Thomas, a coworker, indicated that she worked with appellant from 2009 through 2011 and concurred with appellant's January 14, 2015 statement, attesting that everything on the statement was true to her knowledge, the events happened as stated, and appellant's job duties were correctly described.

In a merit decision dated July 17, 2015, OWCP found that the evidence presented was of insufficient probative value and denied modification of the prior decisions.

LEGAL PRECEDENT

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.⁵ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.⁶ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.⁷

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁸ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within coverage under FECA.⁹ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁷ *Id.*

⁸ 28 ECAB 125 (1976).

⁹ *See Robert W. Johns*, 51 ECAB 137 (1999).

arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹⁰ Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹¹ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹² Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹³

ANALYSIS

On reconsideration appellant, who retired in December 2011, asserted that her emotional condition was a result of her job duties as a transportation assistant under *Cutler*. She specifically alleged, in a January 14, 2015 statement, that in 2009 she started to become emotionally stressed when trying to balance multiple jobs as a travel assistant, passport agent, and performing various counter, accounting, customer service clerk, central telephone operator, port call message, adviser, and ship locator duties while maintaining a physical and electronic, numerical, and alphabetical filing system, without being properly trained. Appellant, however, failed to factually establish that those were her working conditions. The employing establishment previously submitted a statement dated December 9, 2011 in which it countered her allegations. On March 30, 2012 appellant submitted a statement in which she described her job duties. These reports were previously reviewed both by OWCP and the Board in its August 7, 2013 decision.¹⁴ On reconsideration, appellant did not sufficiently identify particular duties performed at specific times and places or provide evidence confirming such allegations.

Although appellant submitted an April 14, 2015 statement from Ms. Thomas, this statement is insufficient to meet appellant's burden of proof. Ms. Thomas merely generally advised that she concurred with appellant's statement and did not provide dates or describe particular situations with any specificity.

Thus, contrary to appellant's assertions on appeal, she has not established any compensable employment factors under FECA and, therefore, has not met her burden of proof in establishing that she sustained an emotional or stress-related condition in the performance of duty. As she has not established any compensable employment factors, the Board need not consider the medical evidence of record.¹⁵

¹⁰ *Supra* note 8.

¹¹ *J.F.*, 59 ECAB 331 (2008).

¹² *M.D.*, 59 ECAB 211 (2007).

¹³ *Roger Williams*, 52 ECAB 468 (2001).

¹⁴ *Supra* notes 2 and 4.

¹⁵ *See Margaret S. Krzycki*, 43 ECAB 496 (1992).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 17 and March 18, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 4, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board